Defense Base Act/
War Hazard Compensation Act Seminar
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A BRIEF HISTORY OF THE DEFENSE BASE ACT

By

Jack Martone

When the United States obtained, and began construction on, the lend lease military bases from England prior to its entry into WWII, gaps and inconsistencies in protection for injured workers became apparent. The large scale construction projects revealed a complete lack of uniform protection as measured by U.S. standards. Thus, the Defense Base Act was passed in August 1941 as a law intended to protect construction workers on lend lease military bases. It extended the application of the Longshore and Harbor Workers' Compensation Act to employees working on U.S. military bases overseas and to employees of federal contractors working on lands used by the U.S. for military purposes in U.S. Territories and possessions. It assured workers of the protection of a law which was uniformly administered and which provided uniform benefits, regardless of the state in which the employee lived or was hired or the law of the country he was working in.

The DBA was supplemented in 1942 to cover war risks. After the U.S. entered the war, military demands required that contractors expand their operations beyond the military bases. Employers began to come up with a wide variety of arrangements, schemes, guarantees, etc. with no set pattern to protect workers in the event of injuries due to war activities. This money came out of the construction budgets so there was less money available for actual construction.

As a result, the War Hazards Compensation Act was passed in December 1942. This law:

1. Amended the DBA to provide statutory coverage for all employees of contractors engaged in work outside the U.S. wherever located;
2. Provided for payments for injuries due to war risks;
3. Provided for reimbursement by the government to employers/carriers;
4. Provided a benefit system for captured contractor employees.

The DBA was amended in 1953 to change the WWII frame of reference to one of national defense.

The DBA was amended again in 1958:

1. To include persons employed overseas by welfare or morale organizations (e.g., USO, Red Cross, Salvation Army);
2. To redefine the term "public work" to clarify that the term covered both fixed and moveable projects including service projects;
3. To eliminate any exclusion of non-citizen employees;
4. By amendment to the Mutual Security Act to extend DBA coverage to employees working abroad under any contract financed by the U.S. under the Mutual Security Act (now the Foreign Assistance Act).

The 1958 amendments made it clear that Congress intended service contracts which did not directly provide for "construction, alteration, removal or repair" to be included within the definition of "public work".

Of course, since the Defense Base Act incorporates the provisions of the Longshore Act, except where the DBA makes specific changes, when the Longshore Act is amended the changes also apply to the Defense Base Act. The extensive Longshore Act amendments in 1972 and 1984 made changes in the benefits payable under the DBA, such as adding a cost of living adjustment in 1972 and eliminating unrelated death benefits in 1984. These changes also apply to the DBA, but the basic coverage considerations of the DBA apply today pretty much as they did in the 'forties and 'fifties.

The level of overseas contractor activity today makes the DBA more important than ever. It no doubt covers more workers now than it ever has, and it's something that everyone who deals with international exposures has to be familiar with.

Without a doubt, by the time the thousands of cases that have arisen over the past few years work their way through the system of judicial review, there will be many important new interpretations to assimilate into our understanding of the DBA. In the meantime, we have to do the best we can with the 1958 version of the DBA as we try to apply it to the present circumstances.